

the 2d of February, 1833; and that they filed lists of debts, due by them as partners, to an amount exceeding \$40,000, and debts due to them, to the amount of \$14,161 56. That John L. Hammond returned a list of household furniture, mortgaged three years before to a Mrs. Robinson, and also to McCormick on the 21st of February, 1832, for money borrowed. It also appeared, that William L. Hammond died in the year 1838. McCormick, the intestate, having died in the year 1841, a bill of revivor was filed against his administrator, one of the present defendants, on the 5th February, 1846, which was answered by him on the 18th of July, 1846.

The only witness examined under the commission was John L. Hammond, sworn on the part of the plaintiff, who proved that the partnership was dissolved in the winter or spring of 1832, at which period he is unable to speak of its solvency. That the firm did not expect to stop payment at the time of its dissolution; but that being disappointed in not receiving \$20,000 which McCormick, the father-in-law of William L. Hammond, had promised to loan them, their notes laid over, he thinks, on the 21st of May, 1832; that they had not available means to pay their debts, but that they had bills receivable, out of which, he understood, a provision was made to pay to the Union Bank the note in question. This arrangement was made by the deponent and brother, (William L. Hammond,) their clerk, and the said McCormick. That deponent objected to the arrangement so made, because they expected to compound with their creditors, and he did not wish to give a preference to one over another; but to make an equal distribution of their assets among their creditors.

The Hammonds are not made parties, and we are without the benefit of the light which their answers would shed upon the question, of the view and expectation with which the act complained of was done; and in the examination of John L. Hammond, the plaintiff's witness, no interrogatory was put to him, calculated to draw information from him upon that point.

It is not contended, in this case, that the transaction by which the debt to the bank was paid, can be impeached upon